IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-10-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.3716 of 2003
W.A.M.P.No.6082 of 2003

Abinava Dharma Sivachariar
Sidarkalana Aiyra Vaisya
Beri Chetty Sangam,
a Society rep.by its President,
Mr.P.Balasubramaniam ... Appellant

Vs.

The Commissioner,
HR&CE Administrative Department,
Chennai. ... Respondent

This Writ Appeal is filed under Clause 15 of the Letters Patent against the order of the learned single Judge in W.P.No.45548 of 2002 dated 18.9.2003.A writ of Certiorari to call for the records of the respondent in proceedings ref.Se.Mu.Na.Ka.No.34015/2002/L.5 dated 4.12.2002 and quash the same.

For Appellant : Mr.W.C.Thiruvengadam

For Respondent : Mr.T.Chandrasekaran
Spl. Government Pleader
(HR&CE)

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N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order of the learned single Judge made in W.P.No.45548 of 2002 dated 18.9.2003, wherein the writ petition filed by the appellant was dismissed.

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2. In the writ petition, appellant/writ petitioner has challenged the show cause notice dated 4.12.2002 calling upon him to state as to why an Executive Officer should not be appointed for the Sri Kandasamy @ Muthukumarasamy Temple, Rasappa Chetty Street, Chennai-3, and the appellant was directed to appear before the Commissioner on 27.12.2002 for enquiry with suitable reply. The said show cause notice was issued under section 45(1) of the Hindu Religious and Charitable Endowments Act, 1959. The reason stated in the show cause notice is that the accounts of the temple were audited by the Audit Wing of the department and the audit reports issued for the Faslis 1407, 1408 and 1409 indicate that there are some irregularities committed by the Board and the Commissioner has several reasons to believe that the affairs of the temple are not properly looked after; the income and expenditure statement are not properly maintained; the buildings belonging to the temple are not fixed with new rents; the Trust Board on its own accord increased the rent; the change of tenancy done without obtaining permission from the Commissioner; and in certain items of expenditure permission of the Commissioner not obtained. It is stated in the notice that the Commissioner found that there is every reason to believe that there are adequate grounds to come to the conclusion about the irregularities and to rectify the errors it is proposed to appoint an Executive Officer under section 45(1) of the HR&CE Act, 1959.

3. The learned single Judge dismissed the writ petition at the admission stage itself, reserving liberty to the appellant to file his objection to the show cause notice and granted 15 days time to file the objections by order dated 13.1.2003. Having not satisfied with the said order, this writ appeal is preferred by the writ petitioner.

4. The learned counsel appearing for the appellant contended that the Commissioner has no power to issue show cause notice under section 45(1) of the Act to the appellant as the Temple is a Community Temple, administered and managed under the provisions of the scheme framed by this court in C.S.No.117 of 1907 dated 12.1.1910 as amended on 25.1.1921. The suo-motu notice issued on 5.3.1999 for modification of the said scheme is still pending on the file of the Joint Commissioner, HR&CE Administration, and since the character of the institution is under adjudication, appointing an Executive Officer to act with Trustees of the Community Temple is not permissible as it affects the right guaranteed under Article 26(1) of the Constitution of India as the temple belongs to Beri Chetty Community members. The learned counsel also submitted that since jurisdictional issue is raised with regard to the power of the Commissioner, which is being exercised under section 45(1) of the

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Act, the writ petition challenging show cause notice is maintainable. The learned counsel cited the judgment of the Supreme Court reported in (1999) 7 SCC 666 (Sri Kanyaka Parameswari Anna Satram Committee v. Commissioner, Hindu Religious & Charitable Endowments Department) and contended that a Denominational Temple can be administered by the said religious denomination and the department has no jurisdiction to appoint the Executive Officer. The learned counsel also cited the judgment of the Division Bench of this Court made in O.S.A.NO.108 of 1987, judgment dated 21.2.1994, filed by the Trustees of the appellant temple against the respondents and in the said judgment the Commissioner is directed not to interfere with the management of the temple except by seeking leave of the Court in C.S.No.117 of 1907.

5. The learned Special Government Pleader for the respondent, who in turn submitted that only show cause notice is issued to the appellant by the Commissioner stating reasons and the appellant can very well submit a reply and appear for enquiry and satisfy the respondent that no Executive Officer is required to be appointed and even jurisdictional issue now raised by the writ petitioner/appellant can be raised before the respondent and only after passing an order by the respondent, appellant will get any cause of action to agitate his claim. The learned counsel also submitted that the members of the Beri Chetty Community filed suit in C.S.No.126 of 1976 for declaration among other things that Temple of Arulmigu Kandasamy @ Muthukumarasamy is Denominational one and by judgment and decree dated 16.6.1987 this Court gave a clear finding that the community has failed to prove that they are religious Denomination and therefore the suit temple is not entitled to be termed as denominational temple for the spiritual benefit of the Beri Chetty Community and suo-motu review of the scheme decree is initiated in the year 1999 and the same is pending. On the basis of the above submissions, the learned counsel for the respondent requested for dismissal of the writ appeal as there is no error in the order of the learned single Judge.

6. We have considered the submissions of the learned counsel for the petitioner as well as respondent.

7. It is not in dispute that Beri Chetty Community filed suit in C.S.No.126 of 1976 for declaration that the Temple is a Denominational one belonging to Beri Chetty Community and the claim of the Denominational temple was negatived by this Court in the judgment and decree dated 16.6.1987. The said finding with regard to the claim of Denominational temple has reached its finality, which is binding on the appellant/writ petitioner. However, the claim made by the appellant in this case is that the temple is a Community

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Temple belonging to Beri Chetty Community and therefore it is entitled to get protection under Article 26(1) of the Constitution of India. Section 107 of the HR&CE Act states that the HR&CE Act will not affect the rights conferred under Article 26 of the Constitution of India.

8. The learned counsel for the appellant argued that Article 26 of the Constitution of India not only guarantees freedom to manage religious affairs to Denominational Temples, but also to any section thereof. Article 26 reads as follows:

> "26. Freedom to manage religious affairs. - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-
>
> (a) to establish and maintain institutions for religious and charitable purposes;
>
> (b) to manage its own affairs in matters of religion;
>
> (c) to own and acquire movable and immovable property; and
>
> (d) to administer such property in accordance with law."

9. The learned counsel for the appellant at the time of argument submitted that the issue as to whether a Community Temple is entitled to get protection under Article 26 of the Constitution of India can be permitted to be agitated before the respondent and the matter need not be gone into on merits at this stage by this Court.

10. In view of the submissions made by the learned counsel for the appellant/writ petitioner, we are not inclined to go into the said question at this stage. We permit the appellant to submit reply to the respondent to the impugned show cause notice dated 4.12.2002 and to the question as to whether a Community Temple is entitled to get protection under Article 26 of the Constitution of India and whether in the light of the Judgment of the Division Bench of this Court in O.S.A.No.108 of 1987 dated 21.2.1994 Executive Officer can be appointed along with other objections for the averments made in the show cause notice. Appellant is given time to file objections within four weeks from the date of receipt of copy of this order and the respondent is directed to consider all aspects including the issue raised by the appellant as to whether the Community Temple is entitled to get protection under Article 26 of Constitution of India as claimed by the appellant and pass orders on merits and in accordance with law.

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The writ appeal is disposed of on the above terms. No costs. Connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

The Commissioner,
HR&CE Administrative Department,
Chennai.

+1cc to Govt. Pleader Sr 63267
+1cc to Mr.W.C.Thiruvengadam, Advocate Sr 62918

LA (CO)
km/17.10.

W.A.No.3716 of 2003

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